

P:\Litigation\Gleba\Pleading\Complain1.wpd  
RFD/lmm June 3, 2003

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

CASE NO:

5:04CV0347

**Kevin Gleba**  
882 Crabapple  
Brunswick, Ohio 44212

Plaintiff

v.

**SummaCare, Inc. d/b/a SummaCare Health  
Plan**  
c/o SummaCare, Inc.  
400 West Market Street  
Akron, Ohio 44303

and

**John Doe No. 1**  
Name Unknown

and

**John Doe No. 2**  
Name Unknown

and

**John Doe No. 3**  
Name Unknown

Defendants

COMPLAINT

JUDGE COWD

U.S. DISTRICT COURT

Now comes the Plaintiff, Kevin Gleba, by and through his undersigned counsel, and brings the following Complaint against the Defendants, SummaCare, Inc. d/b/a SummaCare Health Plan and John Doe Nos. 1-3:

NATURE OF THIS ACTION

1. At all times relevant herein, John Doe Nos. 1-3, constitute other corporations and/or partnerships and/or entities and/or persons, natural and legal, who may be indispensable parties hereto and whose names, addresses and identities could not be discovered by the Plaintiff at the filing of this Complaint.

2. Plaintiff, Kevin Gleba (*hereinafter* "Mr. Gleba"), brings this action against Defendants, SummaCare, Inc. d/b/a SummaCare Health Plan (*hereinafter* "SummaCare, Inc. "), a licensed health insuring corporation, and/or John Doe Nos. 1-3, for violation of the Employment Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001 *et seq.* (*hereinafter* "ERISA").

3. Mr. Gleba is a participant in an employee welfare benefit plan known as the SummaCare Health Plan (*hereinafter* the "Plan"). The Plan is administrated by Defendant, Summa Care, it is governed by ERISA, and Mr. Gleba's former employer, Leitner Fabricating, purchased the plan from Summa Care.

4. This Complaint challenges Defendants' unlawful practices of: (1) failing to provide a full and faire review of Mr. Gleba's condition as required by 29 U.S.C. § 1133(2); and (2) denying Mr. Gleba's medically necessary care in providing the C-Leg prosthetic device and thereafter refusing to pay for the appropriate medical bills which should have been covered by the Plan. Specifically, Mr. Gleba is filing this action to recover benefits due him under the Plan, to enforce his rights under the Plan to receive medically necessary treatment, and to recover costs and attorney's fees as provided by ERISA as well as for medical expenses he incurred and paid.

#### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over this case under 29 U.S.C. § 1132(f), without regard to jurisdictional amount or diversity of citizenship.

#### **PARTIES**

6. The Plaintiff is a resident of Cuyahoga County, Ohio. Mr. Gleba, at all times relevant herein, is and was a vested participant in the SummaCare, Inc. employee healthcare plan, within the meaning of 29 U.S.C. § 1002. Mr. Gleba has standing to bring this action under 29 U.S.C. § 1132(a).

7. Defendant(s), SummaCare, Inc. and/or John Doe Nos. 1-3, is/are a for-profit corporation, with its principal place of business in Akron, Ohio and Summit County. SummaCare, Inc. and/or John Doe Nos. 1-3 is/are licensed to do business in Ohio and underwrites the Plan under which Mr. Gleba is suing.

#### **FACTUAL ALLEGATIONS**

8. Mr. Gleba was employed by Defendant, Leitner Fabricating, until the summer of 2002. At all times relative to this action, Mr. Gleba was covered by the Plan.

9. The Plan is an employee benefits plan within the meaning of 29 U.S.C. § 1002(1). The Plan is currently administered by Defendant, SummaCare. The Plan Number is 34076879400 and is further identified as Plan Number 34076879400.

10. On June 10, 2002, Kevin Gleba, nineteen years of age, suffered a tragic motorcycle accident resulting in an above-the-knee amputation of his left leg. After months of recovery, Kevin went to the Westlake offices of Hanger Prosthetics & Orthotics, Inc., at 29101 Health Campus Drive #104, Westlake Ohio 44145.

11. Defendant, SummaCare referred Kevin to Metro Health Medical Center and to Hanger Prosthetics & Orthotics, Inc., 29101 Health Campus Drive #104, Westlake Ohio 44145.

12. On or about November 2002, Defendant(s) wrongfully denied health insurance benefits to Mr. Gleba for a medically necessary prosthetic device, and he was entitled to those benefits under the Plan.

13. As of March 17, 2003, Mr. Gleba has exhausted all administrative appeals in attempting to overturn Defendants' denial of coverage for the medical expenses related to his necessary prosthetic device.

#### **FIRST CAUSE OF ACTION**

14. Defendants' actions in denying Mr. Gleba's medically necessary care invoke the contractual provisions of the Plan and constitute an unlawful violation of those provisions as well as an unlawful and unjust denial of benefits under 29 U.S.C. § 1132(a)(1)(B) of ERISA.

15. Plaintiff requests recovery of a reasonable attorney's fee and costs of this action pursuant to 29 U.S.C. § 1132(g).

#### **PRAYER FOR RELIEF**

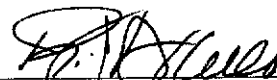
WHEREFORE, Plaintiff respectfully prays that the Court:

1. Declare, adjudge and decree that the Defendants are obligated to pay the Plaintiff the expense he incurred during the years 2002 thru to the present for the care and treatment of his amputation with a sub-standard prosthetic device which has caused him pain, suffering, loss of use of his left leg, loss of employment, and loss of enjoyment of his rights under the Plan described above; and

2. Award Mr. Gleba the costs of this action and reasonable attorney's fee; and

3. Award such other relief as may be just and reasonable.

Respectfully submitted,



**Robert J. DiCello** (0003353)  
Robert J. DiCello Co., LPA  
7556 Mentor Avenue  
Mentor, Ohio 44060  
440-953-8888 office/440-953-9138 fax  
*Counsel for Plaintiff*